



बिहार गजट

असाधारण अंक

बिहार सरकार द्वारा प्रकाशित

14 श्रावण 1935 (श0)
(सं0 पटना 626) पटना, सोमवार, 5 अगस्त 2013

निर्वाचन विभाग

अधिसूचना

19 मार्च 2013

सं0 डी1-007/2013-17—भारत निर्वाचन आयोग, नई दिल्ली की अधिसूचना संख्या 82/बिहार-लो0स0(4/2009)/2012 एवं निर्वाचन अर्जी संख्या 04/2009 में माननीय उच्च न्यायालय, पटना द्वारा दिनांक 25.11.2011 को पारित आदेश/न्याय निर्णय को सर्वसाधारण की जानकारी के लिए पुनः प्रकाशित किया जाता है।

बिहार-राज्यपाल के आदेश से,
आर0 के0 प्रसाद,
संयुक्त सचिव।

भारत निर्वाचन आयोग

अधिसूचना

निर्वाचन सदन, अशोक रोड, नई दिल्ली-110001 तारीख 7 फरवरी, 2013/18 माघ, 1934 (शक)

सं० 82/बिहार-लो.स./ (4/2009)/2013 : लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा-106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं० 4/2009 में दिये गये उच्च न्यायालय, पटना के तारीख 25 नवम्बर, 2011 के आदेश को प्रकाशित करता है।

आदेश से,
आर० के० श्रीवास्तव,
प्रधान सचिव,
भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

NOTIFICATION

*Nirvachan sadan, Ashoka Road New Delhi - 110001 Dated 7th February
2013/18 Magha, 1934 (Saka)*

No. 82/BR-HP/(4/2009)/2013: In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the 25th November, 2011 of the High Court of Judicature at Patna in Election Petition No. 4 of 2009.

By order,
R. K. SRIVASTAVA,
Principal Secretary,
Election Commission of India.

IN THE HIGH COURT OF JUDICATURE AT PATNA

Election Petition No.4 of 2009

(In the matter of an application filed under Sections 80,
80A, 81 of the Representation of the People Act, 1951.)

Bishnudeo Bhandari

..... Petitioner

Versus

Mangani Lai Mandal

..... Respondent

Appearance:

For the Petitioner : M/S. S.B.K.MANGLAM, ANITA KUMARI,
SHYAM KISHORE VERM A, ADVOCATES.For the Respondent : MR. S.N.P. SHARMA, SENIOR ADVOCATE.
MR. AM REND R. A KUMAR SINGH, ADVOCATE.

PRESENT

HON'BLE MR. JUSTICE V.N. SINHA

V.N.Sinha, J. Petitioner is an elector from Babubarhi. Assembly Constituency, which is part of 7, Jhanjharpur Parliamentary Constituency. He has filed this election petition under Sections 80, 80A, 81 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act") questioning the validity of the election of the sole respondent from 7, Jhanjharpur Parliamentary Constituency held on 23.04.2009 on the ground that the sole respondent while submitting his nomination paper violated the right to information of the electors of the said constituency, as read into, interpreted, declared by the Hon'ble Supreme Court while considering the different facets of right to freedom of speech and expression enshrined in Article 19 (1) (a) of the Constitution of India in the case of Union of India Vs. Association for Democratic Reforms and Another, reported in (2002) 5 SCC 294 (hereinafter referred to as the case of Association for Democratic Reforms) vide paragraph 48 of the judgment dated 2.5.2002, whereunder Election Commission of India was directed to call for information on affidavit by issuing necessary order in exercise of the power under Article 324 of the Constitution from each candidate seeking election to Parliament/State Legislature as a part of his nomination paper about the antecedent, assets, liabilities of the candidate, spouse and other dependents.

2. It is submitted by the learned counsel for the petitioner that in order to give effect to the pronouncement of the Hon'ble Supreme Court in the case of Association for Democratic Reforms, the Election Commission of India issued order no.3/ER/2002/Js-II/vol. III dated 28.06.2002 authorizing the Returning Officer to reject the nomination paper of the candidate who furnished any wrong, incomplete or suppressed material information about his antecedent, assets, liability of self, spouse and dependents in the affidavit filed along with the nomination paper. The Parliament in order to give effect to the direction of the Hon'ble Supreme Court in the case of Association for Democratic Reforms {supra} inserted Sections 33A, 33B in the Act by Act No.72 of 2002 with effect from 24.8.2002. Section 33A required the candidate to furnish information under the Act or the Rules made thereunder together with his antecedents. Section 33B of the Act required the candidate to disclose only those informatiotis which are required under the Act and the Rules and no other information directed to be disclosed / furnished under judgment, decree or order of any Court. Validity of Section 33B of the Act was challenged as ultra vires

before the Hon'ble Supreme Court in the case of People's Union for Civil Liberties (PUCL) and Another Vs. Union of India and Another. Under judgment dated 13.03.2003, reported in (2003) 4 SCC 399 Section 33B was declared ultra vires, however, with prospective effect i.e. from the date of the judgment after observing in paragraphs 73, 123 that no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment of the Supreme Court in the case of Association for Democratic Reforms. The direction of the Election Commission to the Returning Officer to reject the nomination paper after conducting summary enquiry at the time of scrutiny of the nomination paper for furnishing wrong or concealing material information by the candidate in the case of assets and liabilities of the candidate, spouse and dependent was not approved by the Hon'ble Supreme Court and the Election Commission was directed to revise its instructions in the light of the directions issued in the case of Association for Democratic Reforms as also provisions of the Act, as in the case of assets and liabilities it would be very difficult for the Returning Officer in a summary enquiry to consider the truth or otherwise of the details furnished with reference to the documentary proof of the assets and liabilities of the candidate. Section 33B having been held ultra vires with prospective effect i.e. from the date of judgment 13.03.2003 in the case of People's Union for Civil Liberties (supra) candidate contesting election to the Parliament/State Legislature during the period between date of enactment of Section 33B i.e. 24.8.2002 and the date of judgment 13.3.2003 cannot be held liable for not furnishing the assets, liability of self, spouse and dependents in the light of the earlier judgment of the Supreme Court dated 2.5.2002 in the case of Association for Democratic Reforms (supra).

3. It is further submitted on behalf of the election petitioner with reference to the averments made in paragraphs- 23-29, 32, 33 of the Election Petition read with affidavit filed by the sole respondent along with his nomination paper, Exhibit- 6 that the respondent while filing nomination paper along with the affidavit deliberately withheld information about the assets and liabilities of his first wife Smt. Sunita Devi in the format filed along with his nomination paper and thereby violated the right to information of the election petitioner as also of the other electors of the Constituency leading to non-compliance of Article 19(1)(a) of the Constitution by the respondent and his election is fit to be set aside under Sections 100(1)(d)(iv) of the Act, which inter alia empower the High Court to declare the election of the returned candidate to be void for non-compliance of the provisions of the Constitution by the returned *candidate*. Learned counsel for the petitioner further submitted that any breach/non-compliance of the constitutional provisions by successful candidate in the election held under the Act shall enable the High Court to declare his election void with reference to the provisions contained in Section 100(1)(d)(iv) of the Act as the word Constitution used therein is general, purpose oriented and cannot be limited to the constitutional provisions referred to in Section 36 of the Act, In this connection, reliance was placed on the Constitution Bench judgment in the case of Mohindar Singh *Gill* Versus Chief Election Commissioner, reported in AIR1978 Supreme Court 851, paragraphs-81, 82, 83. Aforesaid submissions made on behalf of the petitioner has also been incorporated in the written submissions filed on his behalf, which is on record.

4. Learned counsel for the sole respondent has opposed the prayer and submitted with reference to the averments made in Paragraphs 18-31 of the Election Petition that the allegation set out therein do not contain concise statement of material facts, as is required by the mandatory provision of Section 83 (1)(a) of the Act. Merely quoting the provisions of law is not the concise statement of material facts in absence of particulars constituting the allegation. From perusal of averments made in Paragraphs 18-31 of the Election Petition it does not appear that any concise statement of material facts have been

stated therein as the description of the properties of the first wife of the sole respondent, Smt. Sunita Devi said to have been suppressed by the sole respondent in his affidavit filed along with the nomination paper has not been mentioned in any of the paragraphs of the Election Petition particularly in Paragraphs 18-31. With reference to the aforesaid submission it is submitted that the Election Petition being too vague and not containing the concise statement of material facts and particulars, as is required under Section 83(1) of the Act is fit to be dismissed.

5. Learned counsel for the respondent further submitted that besides the pleadings in the Election Petition being vague and not containing concise statement of material facts and particulars the entire deposition of the election-petitioner is also too vague and general in nature as in his evidence also the election-petitioner has failed to disclose any property of Smt. Sunita Devi, first wife of sole respondent whose assets and liability the sole respondent is charged to have concealed is neither made out nor proved.

6. Learned counsel for the respondent further submitted that Rule 4-A and Form 26 of the Conduct of Election Rules, 1961 (hereinafter referred to as the "Rules") only require the candidate to furnish his antecedent in Form 26, the affidavit to be filed by the candidate at the time of submission of his nomination paper. Order of the Election Commission requiring the candidate to furnish the description of the assets and liability of self, spouse and dependents in the affidavit filed along with the nomination paper having been issued by the Election Commission under Article 324 of the Constitution has no force of law and the election of the sole respondent cannot be set aside for his failure to furnish the details of the assets and liability of his first wife, Smt. Sunita Devi in the affidavit filed along with the nomination paper of the sole respondent. Reliance in this connection has been placed on the judgment of the Hon'ble Supreme Court in the case of Lakshroi Charan Sen and others Vs. A.K.M. Hassan Uzzaman and others, reported in A.I.R. 1985 Supreme Court 1233, paragraph 21, equivalent to (1985) 4 SCC 689, paragraph 22, which is quoted herein below for ready reference:

"One of the questions which was debated before us and to which we must now turn, is whether the directions given by the Election Commission to the Chief Electoral Officers have the force of law under the Acts of 1950 and 1951. There is no provision in either of these Acts which would justify the proposition that the directions given by the Election Commission have the force of law. Election laws are self-contained codes. One must look to them for identifying the rights and obligations of the parties, whether they are private citizens or public officials. Therefore, in the absence of a provision to that effect, it would not be correct to equate with law, the directions given by the Election Commission to the Chief Electoral Officers. The Election Commission is, of course, entitled to act *ex debito justitiae*, in the sense that, it can take steps or direct that steps be taken over and above those which it is under an obligation to take under the law. It is, therefore, entitled to issue directions to the Chief Electoral Officers. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the election law. To take a simple example, if the Election Commission issues a directive to a Chief Electoral Officer to invite leaders of political parties for a meeting to consider their grievances pertaining to the electoral roll, the failure to hold such a meeting cannot be equated with the failure to comply with the provision of a law. Leaders of political parties who were asked to be invited by the Election Commission cannot challenge the process of election on the ground that the directive issued by the Election Commission was violated by the Chief Electoral Officer. The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether, the failure on the part of the Chief Electoral Officer to comply with the directions issued by the

Election Commission furnishes any cause of action to any other person, like a voter or a candidate, to complain of it. We are of the opinion that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, - cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of an individual. In the instant case, the Chief Electoral Officer carried out faithfully the directions issued by the Election Commission. But, even if he had not, he could not be accused of disobeying a law."

7. With reference to the judgment of the Hon'ble Supreme Court in the case of Lakshmi Charan Sen (supra) learned counsel for the respondent submitted that in the said decision the Hon'ble Supreme Court was considering direction issued by the Election Commission of India to the Chief Electoral Officer of West Bengal to revise the electoral roll before the election. Such direction was complied with in part. After the election several petitions were filed including Election Petition to declare the election void on the ground of non-compliance of direction issued by the Election Commission of India to completely revise the Electoral Roll. The Hon'ble Supreme Court rejected such plea and categorically held that the election cannot be declared void for non-compliance of the direction of the Election Commission of India to fully revise the electoral roll as such direction cannot be equated with law. It is submitted with reference to the law laid down by the Hon'ble Supreme Court in the case of Lakshmi Charan Sen (supra) that for the so called non-compliance of furnishing the description of the assets and liability of the first wife of sole respondent in the affidavit filed along with the nomination paper election of the sole respondent cannot be declared void. In this connection it is further submitted that Judge trying an Election Petition is merely a creature of the Statute, in the instant case, the Act and he has to try the Election Petition in terms of the jurisdiction vested in him by or under the Act. The Judge trying the Election Petition does not possess power under common law or equity. In this connection learned counsel has further relied on the judgment of the Hon'ble Supreme Court in the case of Jyoti Basu and others Vs. Debi Ghosal and others, reported in A.I.R. 1982 Supreme Court 983 paragraph 8, equivalent to (1982) 1 Supreme Court Cases 691, which is quoted hereinbelow for ready reference :

" A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an

election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say ?"

8. It is submitted with reference to the aforesaid quotation that the Act is complete and self contained code within which election to Parliament and the State Legislature has to be conducted and challenged by raising election dispute strictly in accordance with the provisions of the Act and the Rules framed thereunder. It is submitted with reference to the law laid down by the Hon'ble Supreme Court in the case of Jyoti Basu (supra) that the said judgment relates to joining of the then Chief Minister Jyoti Basu and two other ministers as party respondent in the Election Petition. Sri Jyoti Basu and two other ministers filed a petition before Calcutta High Court in the said Election Petition to delete their names from the array of respondents but the Calcutta High Court dismissed the petition of Jyoti Basu and two others on the ground that they were proper parties so their names should not be struck off from array of respondents. Aforesaid order of the High Court was challenged by Sri Jyoti Basu and two others by filing S.L.P. in the Hon'ble Supreme Court which was allowed by the Hon'ble Supreme Court and Sri Jyoti Basu and two others were directed to be deleted from array of respondents as they were not required to be impleaded as respondent to the election petition under Section 82 and 86 (4) of the Act for the reason that they were neither contesting nor returned nor any other candidate in the impugned election against whom allegation of corrupt practice was made.

9. It is further submitted by the learned counsel for the respondent that the two decisions of the Hon'ble Supreme Court rendered in the case of Association for Democratic Reforms and People's Union for Civil Liberties (PUGL) {supra} have emphasized the importance of right to information, as read into the contents of Article 19(1)(a) of the Constitution, calling upon the candidate seeking election to Parliament/legislature of the State to disclose his antecedent, assets, liabilities of self, spouse and dependents but the aforesaid two judgments does not provide for any punishment to the candidate for its non-compliance. According to learned counsel for the respondent the aforesaid two judgments in the case of Association for Democratic Reforms, People's Union for Civil Liberties (supra) are silent on the aspect of punishment to the candidate who failed to disclose the details of the assets and liability of the self, spouse and other dependents in the affidavit filed along with the nomination paper and in appreciation of such fact the election of a candidate not disclosing the details of the assets and liability of the self, spouse and dependents in the affidavit annexed along with the nomination paper should not be declared as void for non-compliance of Article 19(1)(a) of the Constitution by the High Court under Section 100(1)(d)(iv) of the Act as Section 100(1)(d)(iv) of the Act does not specifically mention Article 19(1)(a) of the Constitution but only refers to the word "Constitution" which is too vague and general term.

10. Learned counsel for the respondent next submitted with reference to Section 36 of the Act that the intention of the Parliament is very clear not to set aside the election of a candidate on the ground of non-compliance of Article 19(1)(a) of the Constitution otherwise Article 19(1)(a) of the Constitution should have been included in Section 36 of the Act which provide for rejection of nomination paper by the Returning Officer. In this connection it is further pointed out that the Returning Officer lacks authority and jurisdiction to reject the nomination paper of a candidate whose affidavit supporting the nomination paper does not contain the assets, liability of the candidate, spouse and dependents. It shall, however, be travesty of justice if the election of the candidate who did not disclose assets, liability of self, spouse and dependents in the affidavit supporting the

nomination paper, is set aside later under Section 100(1)(d)(iv) of the Act on the ground of non-compliance of Article 19(1)(a) of the Constitution for not furnishing the assets, liability of self, spouse and dependents in the affidavit supporting the nomination paper.

11. Learned counsel for the respondent further submitted that if the election of the Returned Candidate is set aside for non-compliance of Article 19(1)(a) of the Constitution such action shall tantamount to usurpation of the legislative power by the trying Judge contrary to the mandate of Section 36 of the Act. Learned counsel further submitted that the provisions of Article 19(1)(a) of the Constitution is directory and not mandatory as it does not provide for any punishment/penalty for its non-compliance. Learned counsel for the respondent with reference to the judgment of the Kerala High Court in the case of Mani C. Kappan Vs. K.M. Mani, reported in 2007(1) KLT 228 further submitted that Election Petition filed calling in question election of the successful candidate as void under Section 100(1)(d)(iv) of the Act on the ground that the elected candidate filed a false affidavit along with his nomination paper suppressing material information omitting the dues he owed to the Tourism Department of the Government violating the order of the Election Commission of India dated 27.3.2003 asking the candidate to furnish assets and liabilities in the affidavit filed along with the nomination paper was dismissed holding that the orders issued by the Election Commission under Article 324 of the Constitution cannot be treated as provisions of the Constitution.

12. Learned counsel for the respondent finally submitted that the election of the Returned Candidate should not be lightly interfered with. In this connection he relied on the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of Jagan Nath Vs. Jaswant Singh and others, reported in A.I.R. 1954 Supreme Court 210 paragraph 7, which is quoted hereinbelow for ready reference :

"The general rule is., well settled that" the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power. It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected."

Aforesaid submissions made on behalf of sole respondent has also been incorporated in the written submissions filed on his behalf, which is on record.

13. In the light of the submissions made by the counsel for the parties noted above, the pleadings filed and evidence led by them is to be scrutinized. Election petitioner is an elector from Babubarhi Assembly Constituency which is one of the six segments of the 7 Jhanjharpur Parliamentary Constituency. His name has been included in the voter-list at Serial No. 262 of Part Np. 63 of Babubarhi Assembly Constituency. He has filed this Election Petition questioning the validity of the election of the sole respondent from 7 Jhanjharpur Parliamentary Constituency held on 23.4.2009 on the ground that the sole respondent while submitting his nomination paper violated the right to information of the

electors of the said constituency including that of the petitioner as the sole respondent intentionally and deliberately withheld information about the existence of his first wife Smt. Sunita Devi and the five children (three sons and two daughters) born through her and their assets and liabilities although the children born through her are dependent on him from the affidavit dated 31.3.2009, Exhibit-6 which the sole respondent filed before the Returning Officer supporting the nomination paper in compliance of the order of the Hon'ble Supreme Court in the case of Association for Democratic Reforms, People's Union for Civil Liberties (supra) and the consequential order dated 27.3.2003 issued by the Election Commission of India. For such violation his election is fit to be set aside under Section 100 (l)(d)(iv) of the Act. Aforesaid assertion has been made in paragraphs 23, 24, 26, 27, 29, 30, 31, 33, 34 of the Election Petition. Reliance in this connection has also been placed over paragraphs 10, 15, 17, 18 of the examination in chief of the election petitioner and the affidavit dated 31.3.2009, Exhibit-6 of the sole respondent filed along with his nomination paper, before the Returning Officer indicating the assets and liabilities of self (sole respondent) and his second wife Smt. Arti Mandal.

14. Perusal of the affidavit dated 31.3.2009, Exhibit-6 clearly indicates that thereunder the assets and liability of only the sole respondent and his second wife Smt. Arti Mandal has been mentioned. The said affidavit does not even state about the existence of the first wife and the children born through her.

15. in the written statement the sole respondent has pleaded that the election petition is fit to be dismissed under Section 86(1) of the Act for non-compliance of the mandatory provisions of Sections 81, 82, 117 of the Act. It has been further averred in the written statement that the election petition is fit to be dismissed for the failure of the petitioner to make concise statement of material facts by resorting to the provisions under Rule 11 of Order VII of the Code of Civil Procedure. In Paragraph-21 of the written statement it has been stated that the Hon'ble Supreme Court in its judgment dated 2.5.2002 passed in the case of Association for Democratic Reforms and another (supra) never directed the candidate seeking election to Parliament and legislature of the State to disclose assets and liabilities of self, spouse and other dependents. Aforesaid statement in paragraph 21 of the written statement appears to be error of record in view of the direction of the Hon'ble Supreme Court contained in sub paragraph (III), (IV) of Paragraph 48 of the judgment of the Hon'ble Supreme Court in the case of Association for Democratic Reforms and another (supra) which clearly indicate that the Hon'ble Supreme Court directed the Election Commission to call for information, on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution from each candidate seeking election to Parliament or State Legislature information about his assets (movable, immovable, bank balance etc.), liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues, in Paragraph 24 of the written statement averment has been made that there is no provision either under the Act or the Rules to reject a nomination paper for non-compliance of the provisions of Section 33A of the Act. In this connection reference has been made to Section- 36 of the Act which does not authorize the Returning Officer to reject the nomination paper of a candidate who has not complied with the provisions of Section 33A of the Act and the directions of the Hon'ble Supreme Court to the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or State Legislature details of his assets and liabilities. In Paragraph 26 of the written statement averment has been made that the sole respondent has not deliberately suppressed information about the assets and liabilities of his first wife, Smt. Sunita Devi and the Children born through her which was on account of ignorance but in any case non-disclosure of assets and liabilities is a petty matter which shall not affect the merit of the nomination paper. In Paragraphs 27, 28 averment has been

made that Section 36 of the Act does not include Article 19 of the Constitution authorizing the Returning Officer to reject the nomination paper for non-compliance of Article 19 of the Constitution.

16. In Paragraph 4 of the examination in chief sole respondent has stated that he did not conceal the assets and liability of his spouse in the prescribed affidavit attached to his nomination paper. Sole respondent further stated in the same paragraph that the election petitioner also did not specifically state either in the pleadings made in the election petition or in his deposition details of the assets and liability of the spouse of the sole respondent which was concealed by the sole respondent in his affidavit attached to the nomination paper. In Paragraph 8 of his cross-examination the sole respondent has stated that he had filed two affidavits at the time of filing of his nomination paper, copy whereof is annexed as Annexure-3 from pages 28-32, 33 of the election petition. In Paragraphs-9, 10 of his cross-examination sole respondent has stated that he does not remember to have filed any third affidavit at the time of filing of his nomination paper. In Paragraph 11 of his cross-examination sole respondent has stated that under Paragraph-B of the affidavit, Annexure-3 he had given details of the assets of his wife Arti Mandal. In Paragraph 12 of the cross-examination the sole respondent stated that during the hearing of the election petition he is not required to inform this Court about the number of his wives as the present proceeding is about the validity of his election for which the number of his wives hardly has any relevance. In Paragraph 13, 14 of the cross-examination the sole respondent stated that Form at page 30 of the election petition asking the election candidate to provide the name of the spouse (s) for the purpose of declaration of his/her assets is contrary to the provisions of the Act and the Rules. In Paragraphs 17, 18 of his cross-examination the sole respondent stated that he has only one wife, namely, Smt. Arti Mandal and Smt. Sunita Devi is not his wife which statement was withdrawn by the sole respondent on 11.4.2011 when he stated before this Court, as would appear from the order-sheet of this Court of the same day (11.4.2011) that he admitted before this Court that he has two wives, namely, M/S Arti Mandal and Sunita Devi. In Paragraph 25 of his cross-examination the sole respondent stated that his both wives are residing together either at the village home or at Patna residence. In paragraph 26 of the cross-examination the sole respondent stated that he has got five children (three sons and two daughters) from his first wife.

17. It appears from consideration of the pleadings filed and the evidence led by the parties and discussed above that sole respondent contested election from 7 Jhanjharpur Parliamentary Constituency which was held on 23.4.2009 for which he filed nomination paper on 31.3.2009 supported by the affidavit, Annexure-3 to the Election Petition which has also been marked as Exhibit-6 in these proceedings declaring assets, liabilities of self and second wife Smt. Arti Mandal contrary to the direction of the Hon'ble Supreme Court rendered under judgment dated 2.5.2002, 13.3.2003 passed in the case of Association for Democratic Reforms, People's Union for Civil Liberties (supra) in compliance where to Election Commission had issued order dated 27.3.2003 calling for information on affidavit from each candidate seeking election to Parliament or State Legislature about the antecedent, assets, liabilities of candidate, spouse and other dependents. Sole respondent, however, did not disclose in the affidavit filed along with the nomination paper the assets and liabilities of his first wife Smt. Sunita Devi and the children born out of the said wedlock. In this connection he himself has stated in Paragraph 26 of the written statement that the suppression about the assets and liabilities of his two wives in the affidavit was not deliberate but on account of ignorance and non-disclosure being a petty matter should not affect the merit of the nomination paper. Non-disclosure of the assets and liabilities of the first wife Smt. Sunita Devi from the affidavit supporting the nomination paper

being admitted and being explained on the ground that the Form seeking such disclosure is contrary to the provisions of the Act and the Rules this Court has to consider the effect of such non-disclosure in the light of the provisions of the Act, the Rules and the direction of the Hon'ble Supreme Court rendered under judgment dated 2.5.2002, 13.3.2003 passed in the case of Association for Democratic Reforms, People's Union for Civil Liberties (PUCL) (supra) and the consequential order issued by the Election Commission of India dated 27.3.2003 and the submissions raised by the counsel for the parties.

18. Hon'ble Supreme Court of India under judgment dated 2.5.2002 passed in the case of Association for Democratic Reforms read right to information as a facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution and directed the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or State Legislature about the antecedent, assets and liabilities of the candidate, spouse and dependents. For giving effect to the judgment of the Hon'ble Supreme Court in the case of Association for Democratic Reforms (supra) the Election Commission of India issued order dated 28.6.2002 authorizing the Returning Officer to reject the nomination paper of any candidate seeking election to the Parliament or State Legislature who furnished any wrong, incomplete or suppressed material information in regard to his antecedent, assets and liabilities of self, spouse and dependents in the affidavit filed along with the nomination paper. The Parliament in order to give effect to the direction of the Hon'ble Supreme Court given in the case of Association for Democratic Reforms (supra) amended the Act inserting Sections 33A, 33B by Act No. 72 of 2002 with effect from 24.8.2002. Section 33A required candidate seeking election to Parliament/ House of Legislature of State to furnish information required under the Act and the Rules as also his antecedent in the affidavit to be filed along with the nomination paper. Section 33B of the Act required the candidate to disclose only those informations which are required under the Act and the Rules and no other information directed to be disclosed/furnished under judgment, decree or order of any Court. Validity of Section 33B of the Act was challenged before the Hon'ble Supreme Court in the case of People's Union for Civil Liberties (PUCL) (supra). Under judgment dated 13.3.2003 Section 33B was held ultra vires with prospective effect i.e. from the date of the judgment after observing in paragraphs 73, 123 of the said judgment that no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment of the Hon'ble Supreme Court in the case of Association for Democratic Reforms and another (supra). The direction of the Election Commission to the Returning Officer to reject the nomination paper after conducting summary enquiry at the time of scrutiny of the nomination paper for furnishing wrong or concealing material information in the case of assets and liabilities of the candidate spouse and dependent was not approved by the Hon'ble Supreme Court and the Commission was directed to revise its instruction dated 28.6.2002. In compliance of the directions of the Hon'ble Supreme Court rendered under judgment dated 13.3.2003 passed in the case of People's Union for Civil Liberties (PUCL) (supra) the Election Commission has issued order dated 27.3.2003 revising its earlier order dated 28.6.2002 withdrawing the authority given to the Returning Officer to reject the nomination paper of candidate furnishing wrong or suppressing material information about assets, liability of self, spouse and dependents after conducting summary enquiry. In the light of the judgment of the Hon'ble Supreme Court dated 13.3.2003 and the order of the Election Commission of India dated 27.3.2003, the Returning Officer, in my opinion, rightly did not reject the nomination paper of the sole respondent on the ground that he violated the right to information of the electors of 7 Jhanjharpur Parliamentary Constituency by suppressing the assets and liabilities of his first wife Smt. Sunita Devi. Sole respondent, however, is liable for non-compliance of Article 19(1)(a) of the

Constitution as he failed to furnish the assets and liabilities of his first wife Smt. Sunita Devi in the affidavit dated 31.03.2009, Exhibit-6 filed supporting his nomination paper. The word Constitution used in Section 100(l)(d)(iv) of the Act is generic, purpose oriented and cannot be controlled by the provisions of the Constitution enumerated in Section 36 of the Act. Notwithstanding his success in the election held on 23.04.2009 from 7 Jhanjharpur Parliamentary Constituency the fact remains that the sole respondent is responsible for infracting the right to information of the electors of the said constituency as declared by the Hon'ble Supreme Court in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra) as a facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution, for such non-compliance, sole respondent has to reap the consequence for violating the right to information of the electors of 7 Jhanjharpur Parliamentary Constituency as he did not include the assets and liability of his first wife Smt. Sunita Devi in the affidavit dated 31.3.2009 filed along with the nomination paper.

19. The submission made by the counsel for the respondent with reference to the judgment of the Hon'ble Supreme Court in the case of Lakshmt Charan Sen (supra) and Jyoti Basu (supra) that the direction of the Election Commission of India to the Chief Electoral Officer cannot be equated with law and the election of the sole respondent cannot be declared void for non-compliance of the directions of the Election Commission contained in the order dated 27.3.2003 appears to be misconceived in view of the fact that in the case relied upon by the counsel for the respondent, the Election Commission of India suo motu issued instruction to the Chief Electoral Officer of West Bengal to revise the Electoral Roll but without effecting complete revision of the Roll the elections were held which was impugned before the Court and the Court observed that for failure to effect complete revision of the Roll the elections already held cannot be invalidated. In the case in hand Election Commission issued order dated 27.3.2003 for enforcing the directions of the Hon'ble Supreme Court given under judgment dated 2.5.2002, 13.3.2003 in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra) whereunder the Hon'ble Supreme Court declared right to information as a facet of Article 19(1)(a) of the Constitution and directed the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or State Legislature about his antecedent, assets and liabilities of self, spouse and dependents so as to enable the voter to exercise his choice about the candidates contesting the poll after knowing the antecedents and the assets and liabilities of not only the candidate but also his spouse and dependents for ensuring transparency, accountability and probity in public life. The two orders of the Hon'ble Supreme Court declaring right to information as facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution being the law of the land under Article 141 of the Constitution of India is binding not only on the Election Commission of India but also on the candidates contesting the election to the parliament or the State Legislature. Any breach in observing the directions of the Hon'ble Supreme Court contained in judgment dated 2.5.2002, 13.3.2003 in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra), may be on account of ignorance, as has been stated in paragraph 26 of the written statement is a breach and non-compliance of the provisions of Article 19(1)(a) of the Constitution and for such breach and non-compliance the candidate who has not complied and "breached the right to information of electors and has won the election has to suffer * the consequence of non-compliance and the breach.

20. Reliance placed by the counsel for the sole respondent over the judgment of the Kerala High Court in the case of Mani C. Kappan (supra) also appears to be misconceived in view of the fact that thereunder Lordship of the Kerala High Court has held that failure

of the elected candidate not to disclose his liabilities in the affidavit annexed with the nomination paper is not violation of the Constitution but violation of the orders of the Election Commission issued under Article 324 of the Constitution proceeds without taking into account that under the aforesaid two judgments of the Hon'ble Supreme Court dated 2.5.2002, 13.3.2003 passed in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra) the Hon'ble Supreme Court declared right to information as facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution and any breach/ non-compliance thereof is breach of Constitution and not the order of the Election Commission of India which is law of the land under Article 141 of the Constitution.

21. In the light of discussions above, the election of sole respondent from 7 Jhanjharpur Parliamentary Constituency held on 23.04.2009 is declared to be void.

(V.N. Sinha, J.)

Patna High Court, Patna.

Dated the 25th day of November, 2011

Rajesh/P.K.P./A.F.R.

अधीक्षक, सचिवालय मुद्रणालय,

बिहार, पटना द्वारा प्रकाशित एवं मुद्रित।

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